



[BILLING CODE 3190-W2-P]

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Dispute No. WTO/DS429]

### WTO Dispute Settlement Proceeding Regarding United States; Anti-Dumping Measures on Certain Shrimp from Viet Nam

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Office of the United States Trade Representative (“USTR”) is providing notice that on February 21, 2012, the Socialist Republic of Vietnam (“Vietnam”) requested consultations with the United States under the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”) concerning certain antidumping administrative reviews and a sunset review conducted by the Department of Commerce on imports of certain frozen warmwater shrimp from Vietnam (Investigation A-552-802), and various U.S. laws, regulations, administrative procedures, practices, and methodologies. That request may be found at [www.wto.org](http://www.wto.org) contained in a document designated as WT/DS429/1. USTR invites written comments from the public concerning the issues raised in this dispute.

**DATES:** Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 13, 2012, to be assured of timely consideration by USTR.

**ADDRESSES:** Public comments should be submitted electronically using [www.regulations.gov](http://www.regulations.gov), docket number USTR-2012-0003. If you are unable to provide submissions using [www.regulations.gov](http://www.regulations.gov), please contact Sandy McKinzy at (202) 395-9483 to

arrange for an alternative method of transmission.

If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395-3640.

**FOR FURTHER INFORMATION CONTACT:** J. Daniel Stirk, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395-3150.

**SUPPLEMENTARY INFORMATION:** USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

### **Major Issues Raised by Vietnam**

On February 21, 2012, Vietnam requested consultations regarding certain antidumping administrative reviews and a sunset review conducted by the Department of Commerce on certain frozen warmwater shrimp from Vietnam, referring in particular to the use of what it describes as “zeroing” in those reviews. Specifically, Vietnam challenges (1) the imposition of antidumping duties and cash deposit requirements pursuant to the final results of the fourth

administrative review for the period from February 1, 2008, to January 31, 2009, in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 75 FR 47771 (August 9, 2010); (2) the fourth administrative review of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* insofar as it did not revoke the antidumping duty order with respect to certain respondents requesting such revocation; (3) the imposition of antidumping duties and cash deposit requirements pursuant to the final results of the fifth administrative review for the period from February 1, 2009, through January 31, 2010, in *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review*, 76 FR 56158 (September 12, 2011); (4) the fifth administrative review of *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam* insofar as it did not revoke the antidumping duty order with respect to certain respondents requesting such revocation; (5) any other ongoing or future antidumping administrative reviews, and the preliminary and final results thereof, related to the imports of certain frozen warmwater shrimp from Vietnam (DOC case A-552-802), as well as any assessment instructions, cash deposit requirements, and revocation determinations issued pursuant to such reviews; (6) the final results of the sunset review in which the Department of Commerce determined that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping, *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results of the First Five-year "Sunset" Review of the Antidumping Duty Order*, 75 FR 75965 (December 7, 2010); and (7) Section 129 of the Uruguay Round Agreements Act ("URAA") and the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103-316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040.

With regard to these measures, Vietnam also has indicated it would like to consult regarding various U.S. laws, regulations, administrative procedures, practices, and methodologies, including (1) the Tariff Act of 1930, as amended, in particular sections 731, 751, 752, 771(7), 771(35)(A), 771(35)(B), and 777A(d); (2) Section 129 of the URAA; (3) the Statement of Administrative Action accompanying the URAA, H.R. Doc. No. 103-316 (1994), reprinted in 1994 U.S.C.C.A.N. 4040; (4) Department of Commerce regulations set forth in part 351 of Title 19 of the Code of Federal Regulations, in particular sections 351.218 and 351.414; (5) the Import Administration Antidumping Manual (2009 ed.), including the computer programs referenced therein; (6) the Department of Commerce's Policy Bulletin 98.3, "Policies Governing the Conduct of Five-Year ('Sunset') Reviews of Antidumping and Countervailing Duty Orders" (April 16, 1998), 63 Fed. Reg. 18871 (April 16, 1998); (7) the Department of Commerce's methodology for determining margins of dumping in administrative reviews; (8) the practice of requiring submission of a separate rate application or certification in original investigations and periodic reviews concerning Vietnamese producers in order to qualify for the all others – or "separate" – rate; (9) the practice of limiting the number of respondents selected for individual examination to only a small fraction of the total number of companies seeking individual review and the accompanying failure to provide alternative methods for non-investigated respondents to demonstrate that they are no longer dumping; (10) the application of a so-called Vietnam-wide entity rate based on adverse facts available to respondents not individually investigated who fail to provide a separate rate application or certification to demonstrate the absence of government control; (11) the practice of denying individually examined and non-individually examined respondents the opportunity to demonstrate the absence of dumping, which would allow for the

dumping order to be revoked as to individual respondents that cease dumping behavior; (12) the Department of Commerce's practice and methodology in five-year ("sunset") reviews for determining whether revocation of antidumping orders would be likely to lead to continuation or recurrence of dumping; and (13) the practice of implementing adverse Dispute Settlement Body rulings, pursuant to Section 129 of the URAA, such that unliquidated entries entered or withdrawn from the warehouse for consumption prior to the date of a Section 129 determination remain subject to assessment of duties pursuant to the original antidumping duty determination.

Vietnam alleges that these laws, regulations, administrative procedures, practices, and methodologies are, as such and as applied in the determinations by the Department of Commerce and actions by U.S. Customs and Border Protection in the shrimp administrative reviews and the sunset review, inconsistent with Articles I:1, VI:1, VI:2, and X:3(a) of the General Agreement on Tariffs and Trade 1994; Articles 1, 2.1, 2.4, 2.4.2, 6, 9, 11, 17.6(i), and Annex II of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Antidumping Agreement); Article XVI:4 of the WTO Agreement; Articles 3.7, 19.1, 21.1, 21.3, and 21.5 of the DSU; and Vietnam's Protocol of Accession to the WTO.

Vietnam alleges that the United States acted inconsistently with the WTO Agreement obligations identified above by applying so-called "zeroing" in the determination of the margins of dumping in the reviews identified above, by limiting the selection of Vietnamese respondents seeking a review such that non-reviewed companies were denied an opportunity to demonstrate the absence of dumping, by treating the Vietnam-wide entity as a single entity and applying to that entity a dumping rate determined on the basis of facts available, the continued use of these

practices, the use of dumping margins calculated using “zeroing” to make the final determination in the sunset review, and the use of WTO-inconsistent antidumping duty assessment rates applied to unliquidated entries that are assessed following a Section 129 determination that implements an adverse WTO Dispute Settlement Body ruling.

### **Public Comment: Requirements for Submissions**

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically using [www.regulations.gov](http://www.regulations.gov) docket number USTR-2012-0003. If you are unable to provide submissions using [www.regulations.gov](http://www.regulations.gov), please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR-2012-0003 on the home page and click “search”. The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Submit a Comment.” (For further information on using the [www.regulations.gov](http://www.regulations.gov) website, please consult the resources provided on the website by clicking on “Help” at the top of the home page.)

The [www.regulations.gov](http://www.regulations.gov) site provides the option of providing comments by filling in a “Type Comments” field, or by attaching a document using an “upload file” field. It is expected that

most comments will be provided in an attached document. If a document is attached, it is necessary and sufficient to type "See attached" in the "Type Comments" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. § 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter –

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and
- (3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and open to public inspection.

Pursuant to section 127(e) of the Uruguay Round Agreements Act (19 U.S.C. 3537(e)), USTR will maintain a docket on this dispute settlement proceeding accessible to the public at [www.regulations.gov](http://www.regulations.gov), docket number USTR-2012-0003.

The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's website at [www.ustr.gov](http://www.ustr.gov), and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the website of the World Trade Organization, [www.wto.org](http://www.wto.org). Comments open to public inspection may be viewed on the [www.regulations.gov](http://www.regulations.gov) website.

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**Bradford L. Ward,**

**Acting Assistant United States Trade Representative  
for Monitoring and Enforcement**

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